

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY VAUGHAN,

Petitioner,

No. CIV S-04-2549 DFL DAD P

vs.

TERESA SCHWARTZ,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On January 17, 2006, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that objections to the findings and recommendations were to be filed within twenty days. Petitioner has filed a letter stating that he wishes to delete his unexhausted claim and proceed on his exhausted claims.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 17, 2006, are adopted in full;

2. Respondent's May 4, 2005 motion to dismiss is granted with leave to amend;


3. Petitioner is granted thirty days from the date of this order in which to file a second amended petition containing only his exhausted claims; the second amended petition shall be submitted on the form provided with this order, shall bear the case number assigned to this action, and shall be labeled "Second Amended Petition" at the top of the first page of the form petition; no cover page, cover letter, or other material shall precede the first page of the form petition;

4. Respondent's answer to the second amended petition shall be filed and served within thirty days after the second amended petition is served; the answer shall be accompanied by all transcripts and other documents relevant to the issues presented in the petition;

5. Petitioner's reply, if any, shall be filed and served within thirty days after the answer is served; and

6. The Clerk of the Court is directed to send petitioner a form petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, with the in forma pauperis application form and instructions removed as unnecessary.

DATED: 2/7/2006



DAVID F. LEVI
United States District Judge